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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14

15 SYNKLOUD TECHNOLOGIES, LLC,
16 Plaintiff,
17 vs.
18 ADOBE, INC.,
19 Defendant.
20

Case No. 3:20-cv-07760-WHA

**ADOBE'S PROPOSAL REGARDING
INFRINGEMENT CONTENTIONS**

The Hon. William H. Alsup

21 Defendant Adobe, Inc. ("Adobe" or "Defendant"), through its attorneys, pursuant to the
22 Court Order dated March 29, 2021, (ECF No. 97), submit this proposal regarding SynKloud's
23 infringement contentions.

24 The parties were unable to agree on a joint proposal after meeting and conferring last
25 week, as discussed below, and agreed to proceed with a joint submission instead. When
26 attempting to finalize the joint submission, on Monday, April 5, 2021 at 11:17 am, SynKloud
27 changed course and sent an email saying the following: "The draft as it currently stands is not a
28 joint proposal by the parties that the Court invited to file by noon today and as such is not

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1 compliant with the Court's order. SynKloud will not be proceeding with this joint statement
 2 filing. SynKloud confirms its earlier position that SynKloud will move to amend infringement
 3 contentions by April 26, 2021 contingent on Adobe complying with technical document
 4 production in native form and with metadata and all of the source code by April 9, 2021. We
 5 understand that Adobe rejects this proposal." Accordingly, Adobe provides the following
 6 proposal.

7 **I. DEFENDANT'S PROPOSAL**

8 The parties are at an impasse regarding (1) whether SynKloud's infringement charts
 9 comply with the Patent Local Rules, and (2) whether SynKloud's definition of "Accused
 10 Instrumentalities" provides the required specificity under the Patent Local Rules. SynKloud has
 11 proposed that they should be allowed to conduct extensive discovery before amending on April
 12 26, two weeks before the parties must file opening summary judgment briefs in the Court's patent
 13 showdown. SynKloud's proposal is untenable because the required amendments are not
 14 dependent on discovery, and the timing of such an amendment after discovery would severely
 15 prejudice Adobe in the patent showdown. Adobe needs to know SynKloud's specific theories
 16 now so Adobe can focus discovery, make sure it provides the right witnesses in response to
 17 SynKloud's 30(b)(6) deposition notice, and prepares a defense to their contentions (which we
 18 cannot fairly do unless SynKloud clearly explains how it thinks Adobe's products infringe).
 19 Therefore, Adobe respectfully requests resolution of the parties' impasse on an expedited basis
 20 now.

21 This Court's Patent Local Rules require a plaintiff to provide charts "identifying where and
 22 how each limitation of each asserted claim is found within each Accused Instrumentality."
 23 Plaintiff has named several broad product suites, but has not explained in its charts "where and
 24 how" each independent application within those suites meets each limitation of each claim. This
 25 is not merely semantics or gamesmanship. SynKloud accuses Creative Cloud, Document Cloud,
 26 Lightroom, and Lightroom with Creative Cloud, but Creative Cloud and Document Cloud are
 27 suites of separate software applications bundled together for subscription purposes. The
 28 applications within the Creative Cloud suite, for example, perform widely varying functions

1 ranging from editing of photographs to mixing sound effects, to processing of PDF documents.
 2 By failing to explain where and how any of the applications with each suite of product infringes,
 3 SynKloud severely prejudices Adobe's ability to defend this case for the Patent Showdown. The
 4 Patent Local Rules demand this level of detail before a plaintiff conducts discovery, but SynKloud
 5 has not provided these details, which are publicly available, and now asks the Court to give it
 6 weeks to try to figure out how it thinks the accused products might infringe. Since January,
 7 Adobe has been asking SynKloud to provide per-product charts that provide the necessary claim
 8 limitation mappings as required by the Patent Local Rules, and to provide a compliant definition
 9 of Accused Instrumentalities that enumerates the specific accused products. SynKloud does not
 10 need discovery to provide compliant charts or identify the accused products, as these are basic
 11 notice requirements of the Patent Local Rule 3-1 do not hinge on discovery.

12 Adobe believes the Court's proposal in its March 29 Order (Dkt. 97) requesting the parties
 13 focus on the "strongest" and "weakest" excerpts of the infringement contentions for a motion to
 14 strike is the appropriate path forward. Adobe further proposes that SynKloud's contentions
 15 regarding claims 9 and 10 of the '690 Patent, SynKloud's and Adobe's respective chosen claims
 16 for the showdown, be the focus of the parties' briefing as "strongest" and "weakest" excerpts,
 17 respectively. Adobe respectfully proposes the following schedule:

<u>Milestone</u>	<u>Date</u>
Adobe files its opening brief (no more than 15 pages) regarding the deficiencies of SynKloud's infringement contentions for claims 9 and 10 of the '690 Patent.	Wednesday, April 7
SynKloud files its opposition brief (no more than 15 pages).	Friday, April 9
Adobe files its reply brief (no more than 10 pages).	Monday, April 12
Hearing	At the Court's earliest convenience

1 Dated: April 5, 2021

Respectfully submitted,

3 /s/ Eugene Mar

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